WORKMEN & THEIR WAGES.

THE TRUCK LAW

AND

HOW TO ENFORCE IT.

BY

CHARLES BRADLAUGH, M.P.

PRICE THREEPENCE.

ALL RIGHTS RESERVED.

WEST BROMWICH:
"THE LABOUR TRIBUNE" OFFICE;
AND AT 63, FLEET STREET, E.C.
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PREFACE.

"Good Wine Needs No Bush;" neither does anything from the pen of the man who, when once publicly asked—and that within a stone's throw of the Office from whence this, the first of a series of "*Labour Tribune* Handy-books," is issued — to what party he belonged, answered proudly,

"TO THE PEOPLE."

The Publisher.

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THE TRUCK LAW

AND HOW TO ENFORCE IT.

Truck means the payment of a wage otherwise than in coin, or otherwise than to the full amount agreed. The Truck Acts, as held unanimously in the Exchequer Chamber in Ingram *v.* Barnes [26 *Law Journal*, New Series, QB, 319], following Baron Parkes in Riley *v.* Warden [18 *Law Journal*, N.S., Exchequer, 129], apply only to persons who "enter into a contract to employ their personal services and to receive payment for that service in wages." To use the language of Mr. Justice Wightman, Floyd *v.* Weaver, 16 *Jurist*, p. 289, the Acts are "intended to protect those who engage for their personal labour."

Truck defined.

To whom Acts apply.

Butty colliers engaged to get coal and ironstone from a mine at so much per yard or ton, who are bound to work personally in the mine, and who do so work, are held to

Butty colliers within Acts.

be within the meaning of the Act, although they employ other workmen under them. Bowers *v.* Lovekin, 1856, L.C.J. Campbell, J.J. Coleridge, Erle, Crompton [*Law Journal*, N.S., QB, 373].

"W.," in the following, means the statute 1 and 2 William IV., c. 37, which was limited to certain specified trades.

"V." means the statute 50 and 51 Victoria, c. 46, by which the truck law is extended to all workmen within the meaning of the Employers and Workmens Act, 1875.

The figures following the letter mean the section and sub-section intended; thus—"W. 1," means 1 and 2 William IV., c. 37, §1. "V. 2" means 50 and 51 Victoria, c. 46, §2. "V. 2-1" means same Act and section, sub-section 1.

Wages must be paid in coin,

All wages [V. 2], except of domestic servants [W. 20], must be paid in the current coin of the realm only, and not otherwise. If any contract provides that any part of the wages shall be paid otherwise than in current coin the contract is illegal, null, and void [W. 1-3]. If wages not actually and wholly paid in coin employer commits

an offence [W. 3]. If the workman freely consents the payment may be in bank notes or cheques, payable on demand, which will then be as coin [W. 8]. If any part of the wages be paid in goods, or otherwise than in coin, the payment is illegal and null [W. 3], and the amount can be sued for by workman [W. 4]. In an action by a workman for wage the employer cannot set-off any goods supplied by the employer, or from any shop in which the employer is interested [W. 5], nor can the employer sue for the value of any such goods [W. 6]. Nor in any action by the workman for wages can the employer set-off or counterclaim for the value of any goods supplied to the workman by the order or direction of the employer or the employer's agent; nor can the employer, or his agent, or even the person who actually supplied the goods to the workman under such order or direction, sue the workman for the price of such goods [V 5].

Or, with consent of workman, in bank note or cheque.

Goods not payment,

And cannot be set off or sued for,

Or counterclaimed for,

Even by third person if supplied on employer's direction.

In Lane *v.* Pratt [*Law Times*, O. S., 623]. In action by workman for wages, where it was proved that on the pay-day the workman produced to the pay-clerk a ticket shewing how much the workman owed to the shop, kept by one of the employers, and the pay-

clerk said, "How much of that do you mean to pay?" and, on the workman stating, gave the difference in money, Mr. Justice Cresswell, at *nisi prius*, there being no other evidence, directed the jury that this was enough to make out payment of the wages. The direction by Mr. Justice Cresswell was, I think, doubtful, even under the old law, and ought to have been challenged *in banco*. It is at any rate now clear that the pay clerk or person paying has no right to keep back or deduct any part of the wage for such a shop debt. Indeed, the Court of Common Pleas so decided this in Wilson *v.* Cookson [32 *Law Journal*, Magistrates Cases, 177], this was an appeal against the refusal of the justices to convict. "The appellant worked for respondent and dealt at his shop. The amounts of the purchases were stopped off appellant's pay at the next reckoning. Appellant admitted that he had his wages whenever he liked, and that he might have had the whole in cash if he had liked."

Pay-clerk must not deduct for goods supplied;

The justices had dismissed the summons on the grounds that there was no contract or understanding for payment by goods, and that the taking goods was wholly optional.

Held [Williams, Willes, Keating, J.J.] that the justices ought to have convicted.

Per Williams, J.—"It is not necessary that "there should be a contract for payment "in goods. Wages were due, and goods "are handed in effect by the respondent "to the appellant, and that amount is "deducted from his wages at the next "reckoning. That is payment by the "delivery of goods."

Per Willes, J.—"The justices have mistaken "the intention of the legislature, because "they think that no offence is committed "if the artificer might have had payment "in money had he so pleased."

Per Keating, J.—"The intention of the "legislature is clear, that under no pre- "tence whatever is payment to be made "otherwise than in money."

Fisher *v.* Jones, argued at the same time, was similar, but before the summons for the penalty the employer had, upon a summons for wages, paid over again in cash the amount of the goods.

And if deductions made, offence not purged by subsequent payment.

Held, the subsequent payment did not purge the offence.

PAYING WAGES IN GOODS CONTRARY TO THE TRUCK ACT.

W. was a cotton manufacturer, and S. a power-loom weaver in his employ. A complaint was made by W.'s manager to S. of a defect in a piece of cloth woven by him, and he was cautioned; but at the end of the week received his full wages without abatement. In the following week a similar defect was discovered in another piece of cloth woven by S.; and S. was told by W.'s book-keeper—first, that something would have to be deducted from his wages for the defective pieces of cloth, or that he would have to take the piece of cloth home; and, on a second occasion, that he would have to take one of the pieces of cloth home, and that there were no wages for him. S. ultimately took away one of the damaged pieces of cloth, the value of which in perfect condition was £1 1s. 3d., and left W.'s employ at the end of the week following that in which the dispute had arisen. The full wages earned by him during that time were £2 1s. 3d., of which amount £1 2s. 6½d. was earned during the week in which the last damaged piece was delivered, and 18s. 8½d. during the last week. On applying

Damaged cloth cannot be charged for and deducted.

for his wages he received £1 in cash and retained the damaged piece of cloth.

Held, that these facts disclosed amounted to a payment of wages in goods, and that the Truck Act, 1 and 2 William IV., c. 37, §9, had been infringed.—Smith *v.* Walton [37 *Law Times*, New Series, 437, Common Pleas Division.]

No workman may be dismissed for not purchasing at specified shop.

No condition, direct or indirect, express or implied, may be imposed by the employer or his agent as to spending part of the wages at any particular shop, and no employer or agent shall dismiss a workman for dealing or not dealing at any particular shop [V. 6]. Any contract containing any provision as to where a workman should spend any part of his wages is illegal and void [W. 2]. Wherever advances have been the custom the employer must not withhold such advances, or deduct or charge any discount [V. 3]. Where articles under £5 value are knitted or otherwise made by a person, or any members of his family, of wool, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, or any combination, or made or prepared of bone, thread, silk, or cotton lace, or lace of any mixed

Contract stipulating as to manner of spending wage illegal.

Advances must be made without interest.

Barter of knitted or other goods under £5.

materials, the Acts apply, and the person buying is treated as employer and the price treated as wages [V. 10]. The section may be temporarily and either wholly or partially suspended in any district, on cause shewn in the interests of the persons making articles.

If workman chargeable to parish, officials may sue.

If workman, wife, or member of his family under 21 becomes chargeable to parish, overseers may recover from employer any wage earned during the preceding three months, and not paid in coin [W. 7].

Provision as to agricultural labourers.

An employer may contract to give an agricultural labourer food, drink (not being intoxicating), a cottage, or other allowances or privileges, in addition to money wages [V. 4]. I am not of opinion that anything in this section makes it an offence for any employer to give cider or other drink to any workman if in express addition to, unstipulated for in, and as a gift beyond, the contract for wages. Mr. John Abbey, Secretary of the Agricultural Department of the Church of England Temperance Society, has issued a notice stating that "The insertion of those three "words, *not being intoxicating*, has made

"any farmer who gives his labourer cider, "beer, or any other intoxicating drink, 'in "addition to money wages, as a remunera- "tion for his services,' liable to the fines "provided as penalties by clause 9 of the "original Act."

I do not agree in this view of the law. There was nothing in the original Act making it illegal to give drink in addition to money wages. It was, and is, illegal to give drink as part of wages, or to contract to pay wages other than in coin; but if a workman signs an agreement in writing an employer may supply and deduct for the real and true value of medicine, medical attendance, or fuel or materials, tools or implements to miners, to be used in mining; or provender for workman's horse; or dwelling for workman; or food cooked and eaten by a workman under the roof of his employer [W. 23]. Employer may advance money to a workman for contribution to friendly societies, savings bank, or to workman during sickness, or for education, and may deduct such advances from wages [W. 24]; but in case of advance deducted for education, a workman may select any State-inspected school to which to send his child, and be entitled to have school fees

Certain deductions may be made if workman signs consent.

Advances by employer, under what circumstances.

If for education, workman may select school.

paid by his employer at the same rate as other workmen from whom deductions are made by the same employer [V. 7].

It was held by the Court of Common Pleas in 1869, in Pillar *v.* Llynvi Coal and Iron Company, 4 *Law Reports*, Common Pleas, 752; 38 *Law Journal*, Common Pleas, 294, where an employer stopped part of wages as contribution to a fund established by the employer to provide medicine and medical attendance for those employed, and schools for their children, without any written agreement signed by the workman, that the workman was entitled to sue for and recover the whole of the sums deducted.

Contributions cannot be deducted except on consent in writing.

In 1867, in Cutts *v.* Ward, *Law Reports*, 2, Queen's Bench, page 357, before J.J. Blackburn, Mellor, and Lush, the plaintiff had signed the rules of the colliery, which authorised the deduction from wages of rent and charges for tools, materials, and medical attendance generally, without specification of particulars.

Question: Whether charges for rent, for wood lent for use in the work, and for a medical club, could be set off by the defendants against wages.

Held: (Blackburn, Mellor, and Lush J.J.) 1. The deductions for rent and medical club were legal. 2. The deduction for wood was illegal, the "supply" of materials intended by section 23 being such as passes a property. What deductions legal.

No deduction to be made for sharpening or repairing tools except by agreement not forming part of condition of hiring [V. 8]. Sharpening or repairing tools.

Where deductions are made for medicine, medical attendance, or tools, employer to submit accounts at least once a year, and produce vouchers to two auditors, to be appointed by the workmen, who are to have all facilities required for audit [V. 9]. Audit of deductions.

Penalty on any employer, or agent, for directly or indirectly entering into any contract, or making any payment declared to be illegal [W. 9], or contravening any provision of Act [V. 11.12]: for first offence, not less than £5 and not exceeding £10; second offence, not less than £10 and not exceeding £20; third or subsequent offence, not exceeding £100 [W. 9]. Separate offences to carry separate penalties, but not to reckon as second offence or third offence until after ten days from and within two years of previous conviction [W. 10]. Penalties, and on whom. When to reckon as second or third offences.

Proceedings for third offence to be by indictment [V. 13-1]. If employer prosecuted for offence committed by his agent, if he proves that he used due diligence to obey law, and that the offence was committed without his knowledge, consent, or command, then, after conviction of real offender, employer shall be exempt [V. 12-2], and if prosecutor be satisfied of all this, proceeding may in first instance be against actual offender.

When agent to be prosecuted.

Who to prosecute.

Inspectors of Mines and Inspectors of Factories are empowered and directed to enforce Acts, and prosecute; and, in addition, in Scotland procurators-fiscal, as part of their official duty, to investigate and prosecute, and their respective costs provided for [V. 13, 2 and 3]. The Act extends to Ireland [V. 18].

Instructions to workmen.

Workmen or others knowing of offences should give immediate information by letter to the district inspector of mines of offence in a mine; or to the district inspector of factories, if in a factory or workshop; in Scotland, unless action is at once taken by the inspector, notice should be given to the procurator-fiscal of the sheriff court. If after a few

days no action is taken the facts should be communicated to the Secretary of State for the Home Department, Whitehall, for any offence in England or Wales; to the Lord-Advocate for Scotland, in the event in Scotland of no action having been taken by the procurator-fiscal; to the Chief Secretary for Ireland for offences within that part of the United Kingdom. If no action, or if unsatisfactory action taken after complaint, the facts should be stated in writing to the M.P. for the city division or borough.—In the case of mines the facts should also be communicated to Mr. Thos. Burt, M.P., as president of the miners; and in those of factories or workshops, to Mr. H. Broadhurst, M.P., as representing the Parliamentary Committee of the Trades Unions.

Hosiery.

"The Hosiery Manufacture Wages Act, 1874" (37 and 38 Victoria, cap 48, limited solely to the hosiery trade), was passed to put an end to a custom which had prevailed among the employers of artificers in the hosiery manufactures of letting out frames and machinery to the workmen, and stopping frame-rents and charges from the wages. It enacts—(§1). That all wages in hosiery manufacture shall be payable in current coin, without deduction, save for bad or

Wages, without deduction, except for bad or disputed work.

Frame-rents illegal.

disputed workmanship; (§2) declares contracts to stop wages, or for frame-rents and charges, illegal, null, and void; and makes

Penalties, and how recoverable.

(§3) the penalty for each offence £5, to be recoverable in the County Court by workmen or anyone who chooses to sue.

The following case was, in 1875, decided under this Act:—

A hand-frame worker was in the employment of hosiery manufacturers. By the regulations of the factory he was liable to a fine of 8d. a-day for staying away from work without permission. Having been fined for such absence, and the amount having been deducted from his wages, he brought an action to recover from his employers the penalty mentioned in sec. 3. —*Held:* That the employer was prohibited from deducting from the wages of the artificer frame-rent, and standing or other charges, *ejusdem generis* with rent and standing, but that fines were not charges within

Fines not within Act.

the meaning of sec. 3, and therefore they had not incurred the penalty under that section. Wallis *v.* Thorp, 44 *Law Journal*, Queen's Bench, 137; 10 *Law Reports*, Queen's Bench, 383; 23 *Weekly Reporter*, 730; 33 *Law Times*, N. S., 11.

Employers and Workmens Act, 1875.

The Employers and Workmens Act, 1875 [38 and 39 Vic., c. 90] gave (§3) power to a County Court "in any dispute between an employer and a workman, arising out of or incidental to, their relation as such," to adjust and set off claims on the part of either for wages, damages, or otherwise; and on such terms as it thinks just, to rescind any contract, or, in lieu of awarding damages for breach, to order completion of contract, where defendant is willing to give security. By § 4 these powers may be exercised by magistrates where the amount claimed, or payment or security required, is under £10.

§10 thus defines "workman":—

Definition of workman.

"The expression 'workman' does not include a domestic or menial servant, but save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be expressed or implied, oral or in writing, and be a contract of

service or a contract personally to execute any work or labour."

Contradictory decisions, as to.

It was held in Morgan *v.* the London General Omnibus Company [Law Reports 13, Queen's Bench Division, 832] that an omnibus conductor was not within this definition because not engaged in manual labour. The Court of Session, Scotland, held on the contrary, Wilson *v.* Glasgow Tramway Company [5 Rettie's Reports, 1879] that a tramway guard was within the definition.

FORFEITURE OF WAGES.

When wages forfeitable.

A weaver was employed as a weekly servant, his wages being regulated by the number of pieces which he wove and delivered to his masters. The wages of their workmen were ascertained and fixed at noon on Thursday in each week, but were not paid till the next Saturday. By rules embodied in the contract of hiring, the workmen were required to give, before leaving, fourteen days' notice at the time of booking up on Thursday. "Persons leaving without notice will forfeit all wages due." On a Thursday the sum earned by the weaver in the preceding week was ascertained and fixed at 15s. He commenced

another week on the afternoon of the same day, and worked during the morning of Friday, and earned 7s. He left during the forenoon of Friday without having given any notice.—*Held*, that he had forfeited, by leaving before the Saturday, the wages due on the Thursday but not payable till the Saturday, as well as the wages earned between noon of Thursday and Friday morning. Walsh *v.* Walley, 2 Law Reports, Queen's Bench, 367; 43 *Law Journal*, Queen's Bench, 102.

WAGES—WEEKLY HIRING.

Effect of weekly hiring.

A painter was hired by the week, his wages to be 7d. per hour, payable every Saturday at noon. The full week consisted of fifty-four and a half hours; overtime was paid for at the same rate. A week's notice from either party was required. He left the service at noon on Friday, before the week was up, and without giving any notice, having worked, including overtime, since the previous Friday, fifty-seven hours.—*Held*, that he was not entitled to recover his wages for the current week of his leaving service.—Saunders *v.* Whittle, 24 *Weekly Reporter*, 406; 33 *Law Times*, new series, 816.

A factory winder was paid every Saturday for the number of sets she had wound off during the week ending on the preceding Wednesday; one of the rules of the factory in which she worked was that fourteen days' notice in writing was required previously to leaving the employment, such notice to be given on a Thursday; and all persons leaving without notice would forfeit the whole of the wages to which they would otherwise have been entitled, and also render themselves liable to be proceeded against according to law. She earned 3s. 7d. on the first two days of one week of her employment, was absent with leave on the Saturday, did not return, and wholly left the service, without leave or notice, on Monday. In an action by her for 3s. 7d. earned, the County Court Judge held that hers was a weekly hiring, and that, although her master's damage by reason of her absence was only 3s., she could not recover anything under the Employers and Workmens Act, 1875.—*Held*, that, notwithstanding the fortnight's notice required, the facts justified the finding that the service was weekly; that she had no claim for wages or other sum due for work done; and that the County Court Judge was right.—Gregson *v.* Watson, 34 *Law Times*, new series, 143.

COUNTER CLAIMS BY EMPLOYERS.

Employer can counterclaim for damaged goods.

A person was employed as a spinner, and was discharged for neglecting his work, the employers refusing to pay him wages in lieu of notice. He took proceedings against them in the County Court. At the hearing no counter-claim or set-off was filed or set up, but evidence was produced to shew that he had been guilty of negligence. A verdict for £3 10s. was given in his favour.—*Held*, that the employers were not precluded from preferring a claim before justices against him for wrongfully and negligently damaging their materials, for the only matter decided by the County Court was whether there was such negligence on his part as would justify his dismissal without notice.—Hindley *v.* Haslam, 3 Law Reports, Queen's Bench Div. 481; 27 *Weekly Reporter*, 61.

Stannaries Act 1887.

By the Stannaries Act, 1887, 50 and 51 Vic., c. 43, which only applies to metalliferous mines and tin streaming works within the Stannaries of Cornwall and Devon, it is by § 11 lawful for an employer to keep back seven days' wages from the earnings of any miner working at surface; the miners except as to this to be paid once a fortnight, and the amount retained to be paid to the

What may be kept back.

miner within seven days of his ceasing to be employed. Miners working by contract underground to be paid within 14 days from the expiration of the contract, but at the end of 28 days from the commencement of the contract, and at the end of every subsequent fortnight, to be entitled to a subsist equal to the estimated earnings of the previous fortnight. It is also provided, though this seems somewhat contradictory, that when a miner first enters employment by contract under ground he shall be entitled to seven days subsist at the end of the first fortnight, and to a further seven days' subsist at the end of the second fortnight. If employed by tut-work, a miner to be paid all wages due within seven days from the termination of his employment; and if employed by tribute, at the end of seven days from the sampling and assaying of the ore raised by him; and in the case of copper at the end of seven days from the next ticketing day. By § 12 the purser is to pay all wages and subsist to the miners at the account house of the mine in current coin of the realm. By § 13 all moneys deducted in any mine from the wages for mine club, or accident or sick or benefit fund shall, unless a majority of the

Payment under contract.

Subsist.

Tut-work.

Payment at account house.

Club and sick fund.

miners by resolution decide otherwise, be deemed to belong to the miners. By § 14 the miners may appoint a committee of management, and transfer the fund to any registered friendly society.

Management and transfer.

By the Coal Mines Regulation Act, 1887, 50 and 51 Vic., c. 58, applying only to mines of coal, mines of stratified ironstone, mines of shale, and mines of fireclay. § 11, no wages may be paid in any public house, beer-shop, or place for the sale of any spirits, beer, wine, cider, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto or occupied therewith. By § 12, where wage depends on the amount of mineral gotten, the payment must be according to the actual weight.

Coal Mines Regulation Act, 1887.

Wages must not be paid where liquor sold.

Payment by weight.